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HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders

REFERENCE: AL G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9)
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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 16/4, 24/5, and 16/5.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning **the amended Information and Communication Technology Act which reportedly restricts the right to freedom of opinion and expression.**

According to the information received:

On 6 October 2013, the amendment to the Information and Communication Technology Act of 2006 was passed by the Parliament following the approval of the Cabinet on 19 August 2013, which contains a number of provisions that could limit the right to freedom of expression, including information.

The Amendment reportedly makes Section 54 on "damage to computer systems", Section 56 on "hacking", Section 57 on "publishing fake, obscene or defaming information in electronic form", and Section 61 on "breach of access" non-bailable. It is also reported that the amended Act imposes disproportionate and stiffer sanctions on persons using the internet to criticize the Government.

The amendment includes:

- Abolishment of the provision of bail;

- Unrestricted power of law enforcement officials to arrest suspected offenders without obtaining a warrant; and to keep the suspected offenders in detention for an indefinite period without bail;
- The maximum punishment of fourteen years imprisonment, from ten years in the original Act from 2006.

It is further reported that these amendments are in conflict with Bangladesh's Right to Information Act enacted in 2009. This Act acknowledges freedom of speech and the right to information as one of the basic rights of citizens and promotes proactive disclosure from Government and non-government agencies to ensure transparency.

Serious concern is expressed that the amended Information and Communication Technology Act could unduly restrict the right to freedom of opinion and expression online, thereby curtailing the legitimate activities of political pressure groups and civil society organisations. Grave concern is also expressed that this legislative development could silence dissenting voices against the Government.

While we do not wish to prejudge the accuracy of these allegations, we wish to refer your Excellency's Government to article 19 of the International Covenant on Civil and Political Rights (ICCPR), that Bangladesh acceded to on 6 September 2000, which provides that "[e]veryone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

In this connection, we wish also to reiterate the principle enunciated in Human Rights Council Resolution 12/16, which calls on States, while noting that the exercise of the right to freedom of opinion and expression carries with it special duties and responsibilities, to refrain from imposing restrictions which are not consistent with article 19, paragraph 3 of the ICCPR, including on (i) discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

In addition, the Human Rights Committee has affirmed in its General Comment on the right to freedom of opinion and expression (CCPR/C/GC/34) that any "restrictions on the operation of websites, blogs or any other internet-based, electronic or other such information dissemination system, including systems to support such communication, such as internet service providers or search engines, are only permissible to the extent that they are compatible with paragraph 3 [of article 19]. It is also inconsistent with paragraph 3 to prohibit a site or an information dissemination system from publishing material solely on the basis that it may be critical of the government or the political social system espoused by the government".

We would further like to refer to Human Rights Council resolution 20/8 on the promotion, protection and enjoyment of human rights on the Internet (A/HRC/RES/20/8) adopted on 5 July 2012, which “affirms that the same rights that people have offline must also be protected online, in particular freedom of expression, which is applicable regardless of frontiers and through any media of one’s choice.” It further called upon all States to “promote and facilitate access to the Internet and international cooperation aimed at the development of media and information and communications facilities in all countries.”

We would also like to appeal to your Excellency's Government to refer to article 22 of the ICCPR, which provides that “Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests”.

In this connection, we would like to refer to Human Rights Council resolution 21/16, and in particular operative paragraph 1 that “reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.”

In addition, we would like to refer to the concluding remarks of the first thematic report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, which reiterate that these rights “are cornerstone in any democracy ... [and call upon States] (k) [t]o recognize that the rights to freedom of peaceful assembly, and of association can be exercised through new technologies, including through the Internet; [and] (g) [t]o provide individuals exercising their rights to freedom of peaceful assembly and of association with the protection offered by the right to freedom of expression” (A/HRC/20/27 par. 82 and 84 k and g).

Furthermore, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that “everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels” and that “each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

Article 6 points a) which provides that everyone has the right, individually and in association with others to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems.

Article 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

Moreover, as it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your cooperation and your observations on the following matters:

1. To what extent are the facts related to the alleged restrictions imposed by the amendment of the Information and Communication Technology Act accurate?
2. Please explain how its provisions are in accordance with Bangladesh's obligations under international human rights law and standards, including the ICCPR and particularly with regard to the right to freedom of opinion and expression.

We would appreciate a response within sixty days. Your Excellency's Government's response will be made available in a report to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

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freedom of opinion and expression

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